

Commodity Credit Corporation, USDA

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(d) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.15 Payments not subject to claims.

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1467.16 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1467.17 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of Department under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the Department in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the Department in accordance with applicable law.

[60 FR 28514, June 1, 1995, as amended at 60 FR 67316, Dec. 29, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.18 Scheme and device.

(a) If it is determined by the Department that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such

landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the Department.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A landowner who succeeds to the responsibilities under this part shall report in writing to the Department any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

PART 1468—CONSERVATION FARM OPTION

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Subpart A—General Provisions

§ 1468.1 Purpose.

(a) Through the Conservation Farm Option (CFO), the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns, water quality protection or improvement; wetland restoration and protection; wildlife habitat development and protection; and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. The Natural Resources Conservation Service (NRCS) may provide technical assistance, upon request by the producer or landowner.

(b) The CCC provides a single contract and annual payments for implementation of innovative and environmentally-sound methods for addressing natural resource concerns for producers of wheat, feed grains, cotton, and rice, resulting in consolidation of payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program cost-share agreements (WRP), and the Environmental Quality Incentives Program (EQIP). CFO participation is determined through two step process: first, the Chief, with FSA concurrence, selects CFO pilot project areas based on proposals submitted by the public; then CCC accepts applications from eligible producers or owners within the selected pilot project area.

§ 1468.2 Administration.

(a) CFO is carried out using Commodity Credit Corporation funds and will be administered on behalf of CCC by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS will:

(1) Provide overall program management and implementation for CFO;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of pilot project areas;

(3) Establish annual payment rates consistent with EQIP, CRP, and WRP payment rates;

(4) Make funding decisions and determine allocations of program funds, with FSA concurrence;

(5) Determine eligibility of practices;

(6) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance.

(c) FSA will:

(1) Be responsible for the administrative processes and procedures including applications, contracting, and financial matters, such as payments to participants, assistance in determining participant eligibility, and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA will cooperate in establishing program policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

§ 1468.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer or owner in an approved pilot project area who has requested in writing to participate in CFO.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource

district, land conservation committee, or similar legally constituted body.

Conservation farm plan means a record of a participant's decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS Field Office Technical Guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and take advantage of opportunities, at a conservation management system level. In the conservation farm plan, the needs of the client, the resources, and Federal, state, Tribal, and local requirements will be met.

Conservation practice means a specified treatment, such as structural, vegetative, or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Farm Service Agency county committee means a committee elected by the agricultural producers in the county or area, in accordance with Sec. 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The guide contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. A copy of the guide for that area is available at the appropriate NRCS field office.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims

Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Innovative technology means the use of new management techniques, specific treatments, or procedures such as structural or vegetative measures used in field trials or as interim conservation practice standards that have the purpose of solving or reducing the severity of natural resource use problems or that take advantage of resource opportunities. Innovative technologies used by program participants must be able to achieve the required level of resource protection.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, wildlife management, resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay, in addition to refunds and other charges, if the participant breaches the contract, and represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to CFO implementation.

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Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to a CFO contract.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State technical committee means a committee established by the Secretary in a state pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.

(a) CCC may periodically solicit proposals from the public to establish pilot project areas in the FEDERAL REGISTER.

(b) Pilot projects may involve one or more participants. Each owner or producer within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO. This pilot project area may be a watershed, a subwatershed, an area, or an individual farm that can be geographically described and has specific environmental sensitivities or sig-

nificant soil, water, and related natural resource concerns. The pilot project area must have acreage enrolled in a production flexibility contract, which is authorized by the Agricultural Marketing and Transition Act of 1996. After these pilot project area proposals are received, the Chief, with FSA concurrence, will select proposals for funding.

(c) CCC will select pilot project areas based on the extent the individual proposal:

(1) Demonstrates innovative approaches to conservation program delivery and administration;

(2) Proposes innovative conservation technologies and system;

(3) Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;

(4) Ensures effective monitoring and evaluation of the pilot effort;

(5) Considers multiple stakeholder participation (partnerships) within the pilot area;

(6) Provides additional non-Federal funding; and

(7) Addresses the following:

(i) Conservation of soil, water, and related natural resources,

(ii) Water quality protection or improvement,

(iii) Wetland restoration and protection, and

(iv) Wildlife habitat development and protection,

(v) Or other similar conservation purposes.

§ 1468.5 General provisions.

(a) Program participation is voluntary.

(b) Participation in the CFO is limited to producers of wheat, feed grains, cotton, or rice who have a production flexibility contract, in accordance with part 1412 of this chapter, on the farm enrolling in CFO and who are eligible for either CRP (7 CFR part 1410), EQIP (7 CFR part 1466), or WRP (7 CFR part 1467).

(c) The participant is responsible for the development of a conservation farm plan for the farm or ranch and may request assistance from NRCS or a third party in writing both the conservation farm plan and installing the

practices outlined within the plan. Conservation practices in the conservation farm plan that would have been eligible for payment under CRP, EQIP, or cost-share agreements under WRP are eligible for CFO payment. The provisions for determining eligibility for payment and the calculation of payment under CFO will be similar to those specified for the eligible conservation practices under CRP, EQIP, or cost-share agreements under WRP. For land retirement payments, the CRP payment schedule in effect for the applicable soils at the time the CFO contract is signed will be utilized. CCC will provide annual payments to a participant for such conservation practices as specified in the time schedule set forth in the conservation farm plan.

§ 1468.6 Practice eligibility provisions.

(a) Practices may be eligible for payment under CFO if the conservation practice specified in the conservation farm plan is determined to be an eligible practice, as determined by the Chief, in accordance with:

(1) 7 CFR part 1410 for land retirement rental payments and practices that are eligible under CRP;

(2) 7 CFR part 1467 for wetland restoration or protection practices that are eligible under WRP; or

(3) 7 CFR part 1466 for conservation practices that are eligible under EQIP.

(b) For practices that are installed on retired land, the CRP cost-share rate for practices must be utilized.

§ 1468.7 Participant eligibility provisions.

Participants in the CFO must at the time of enrollment:

(a) Have a production flexibility contract in accordance with part 1412 of this chapter on the farm enrolling in CFO.

(b) Agree to forgo earning future payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program cost-share payments authorized by part 1467 of this chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO for the term of the CFO contract.

(c) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(d) Have control of the land for the term of the proposed contract period;

(1) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.

(2) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written authorization by the landowner to apply the structural or vegetative practice.

(3) If the applicant is a landowner, the landowner is presumed to have control.

(e) Submit a proposed conservation farm plan to CCC that is in compliance with the terms and conditions of the program. To receive payment under the CFO, the participant must also meet the eligibility requirements, as determined by the Chief, in:

(1) 7 CFR part 1410 if the land retirement rental payment and practice determined eligible in accordance with § 1468.6(a);

(2) 7 CFR part 1467 if the wetland restoration or protection practice was determined eligible in accordance with § 1468.6(b), or

(3) 7 CFR part 1466, if the conservation practice was determined eligible in accordance with § 1468.6(c).

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable.

(5) Supply information as required by CCC to determine eligibility for the program.

(6) Comply with all the provisions of the CFO contract which includes the conservation farm plan approved by the local conservation district.

§ 1468.8 Land eligibility provisions.

Land may be eligible for enrollment in CFO, if CCC determines that the farm or ranch is enrolled in a production flexibility contract, authorized by the Agricultural Marketing Transition

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Act of 1996 and if the land upon which the CFO conservation practice, will be applied is determined to be eligible land as determined by the Chief, in accordance with:

(a) 7 CFR part 1410, if the practice was determined an eligible land retirement rental payment and cost-share practice similar to CRP in accordance with §1468.6(a);

(b) 7 CFR part 1467, if the practice was determined an eligible wetland restoration or protection practice similar to WRP in accordance with §1468.6(b); or

(c) 7 CFR part 1466, if the practice was determined an eligible conservation practice similar to EQIP in accordance with §1468.6(c).

§ 1468.9 Conservation farm plan.

(a) The conservation farm plan forms the basis of the CFO contract. Prior to contract approval, a conservation farm plan must be written and approved. In deciding whether to approve a conservation farm plan, CCC may consider whether:

(1) The participant will use conservation practices to solve the natural resource concerns that will maximize environmental benefits per dollar expended, and

(2) The conservation practice would have been eligible for enrollment in the CRP, EQIP, or under the WRP cost-share agreements.

(b) The conservation farm plan for the farm or ranch unit of concern shall:

(1) Describe any resource conserving crop rotation, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contract period;

(2) Address the resource concerns identified in the CFO pilot project area proposal;

(3) Contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan;

(4) Ensure that net environmental benefits under a CRP contract are maintained or exceeded for the whole farm, as constituted by FSA, when terminating a CRP contract and enrolling in a CFO contract; and

(5) Meet the objectives of the pilot project area.

(c) The conservation farm plan is part of the CFO contract.

(d) The conservation farm plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide or as approved by the State Conservationist.

(e) Participants are responsible for implementing the conservation farm plan in compliance with this part.

(f) Upon a participant's request, the NRCS may provide technical assistance to a participant.

(1) Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CFO contract compliance.

(2) Technical and other assistance provided by qualified personnel not affiliated with NRCS may include, but not limited to: conservation planning; conservation practice survey, layout, design, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists.

(g) All conservation practices scheduled in the conservation farm plan are to be carried out in accordance with the applicable NRCS Field Office Technical Guide. The State Conservationist may approve use of innovative conservation measures that are not contained in the NRCS Field Office Technical Guide.

(h)(1) To simplify the conservation planning process for the participant, the conservation farm plan may be developed, at the request of the participant, as a single plan that incorporates, other Federal, state, Tribal, or local government program or regulatory requirements. CCC development or approval of a conservation farm plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by a non-USDA agency, except as agreed to by the participant and the relevant Federal, state, local or tribal entities.

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(2) CCC may accept an existing conservation plan developed and required for participation in any other CCC or USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation farm plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CFO contract. It is the responsibility of the participant to ascertain and comply with all applicable statutory and regulatory requirements.

Subpart B—Contracts

§ 1468.20 Application for CFO program participation.

(a) Any eligible owner or producer within an approved pilot project area may submit an application for participation in the CFO to a service center or other USDA county or field office(s) of FSA or NRCS, where the pilot project area is located.

(b) CCC will accept applications throughout the fiscal year. CCC will rank and select the offers of applicants periodically, as determined appropriate by the State Conservationist. The application period will begin after a pilot project area has been approved.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a pilot project area which consists of more than one owner or producer. NRCS will prioritize applications from the same pilot project area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and designated FSA official, will approve for funding the application in a pilot project area based on eligibility factors of the applicant and the NRCS ranking.

(d) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. An applicant has the option of offering and accepting less than the maximum program payments allowed, offering to apply more conservation practices to the land in order to increase the likelihood of being enrolled. In evaluating the applications, the des-

ignated conservationist will take into consideration the following factors:

- (1) Soil erosion;
- (2) Water quality;
- (3) Wildlife benefits;
- (4) Soil productivity;
- (5) Conservation compliance considerations;
- (6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;
- (7) State water quality priority areas;
- (8) The environmental benefits per dollar expended; and
- (9) The degree to which application is consistent with the pilot project proposal.

(e) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1468.21 Contract requirements.

(a) In order for an applicant to receive annual payments, the applicant must enter into a contract agreeing to implement a conservation farm plan. The FSA county committee, with NRCS concurrence, will use the NRCS ranking consistent with the provisions of § 1468.20 and grant final approval of the contract.

(b) A CFO contract will:

(1) Incorporate by reference all portions of a conservation farm plan applicable to CFO;

(2) Be for a duration of 10 years, and may be renewed, subject to the availability of funds, for a period not to exceed 5 years upon mutual agreement of CCC and the participant;

(3) Provide that the participant will:

(i) Not conduct any practices on the farm or ranch unit of concern consistent with the goals of the contract that would tend to defeat the purposes of the contract, or reduce net environmental and societal benefits;

(ii) Refund with interest any program payments received and forfeit any future payments under the program, on the violation of a term or condition of the contract, in accordance with the provisions of § 1468.25 of this part;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject

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to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, in accordance with the provisions of § 1468.24 of this part;

(iv) Agree to forego participation in CRP, EQIP, and the cost-share agreements under WRP, along with future payments associated with these programs, with regard to the land under the CFO contract;

(v) Supply information as required by CCC to determine compliance with the contract and requirements of the program;

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices in accordance with the provisions of § 1468.22 of this part, and

(5) Include any other provision determined necessary or appropriate by CCC.

(c) There is a limit of one CFO contract at any one time for each farm, as constituted by FSA.

(d) The contract will incorporate the operation and maintenance of conservation practices applied under the contract, including those practices transferred from terminated CRP and EQIP contracts and WRP cost-share agreements. For persons wishing to transfer from CRP, EQIP, or WRP to CFO, practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate, unless otherwise stated in the conservation farm plan.

(e) Acreage that is subject to a WRP easement will not be included in the CFO contract.

(f) Upon completion, the participant must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract.

§ 1468.22 Conservation practice operation and maintenance.

(a) The participant will operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the conservation farm plan. Conservation practices installed before the execution of a CFO contract, but needed in the contract to obtain the envi-

ronmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practice during the lifespan of the practice as specified in the contract to ensure that the operation and maintenance is occurring.

(b) For those persons who are signatories to existing CRP or EQIP contracts, or WRP cost-share agreements, practices will be transferred from EQIP and CRP contracts or WRP cost-share agreements, as agreed upon in the CFO conservation farm plan and CFO contract. Remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless otherwise stated in the conservation farm plan and CFO contract.

§ 1468.23 Annual payments.

(a) CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant for that practice as specified in:

(1) Part 1410 of this chapter, if the practice is a land retirement rental payment or cost-share practice which would have qualified for payment under CRP in accordance with § 1468.6(a);

(2) Part 1467 of this chapter, if the practice is a wetland restoration or protection practice which would have qualified for payment under WRP which was determined eligible in accordance with § 1468.6(b);

(3) Part 1466 of this chapter, if the practice was a conservation practice which would have qualified for payment under EQIP which was determined eligible in accordance with § 1468.6(c);

(b) The maximum amount of annual payments which a person may receive under the CFO for any fiscal year shall not exceed the total of the amounts calculated in accordance with paragraph (a) of this section after being limited as follows:

(1) The payment calculated in accordance with paragraph (a)(1) of this section is limited in accordance with CRP payment limitation provisions set forth in part 1410 of this chapter.

(2) The payment calculated in accordance with § 1467.9(a)(2) of this chapter is not limited.

(3) The payment calculated in accordance with § 1466.23(a)(3) of this chapter is limited in accordance with EQIP payment limitation provisions in § 1466.23(b) of this chapter.

(c) The regulations set forth at part 1400 of this chapter will be applicable in making payment eligibility determinations for CFO and in making person determination as they apply to the limitation of payments determined in accordance with paragraph (b) of this section.

(d) The CCC cost-share payments to a participant shall be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

(e) A landowner or producer that enrolls in CFO and terminates a CRP or EQIP contract or WRP cost-share agreement will be eligible to receive payments for practices which have been determined, established, or completed by the technical agency under those contracts or agreements. Once the CFO contract is effective, all payments for practices, including any practice transferred from the terminated contract agreement will be made under the CFO contract, except for payments already earned under prior contracts or cost-share agreements.

(f) Payments will not be made to a participant who has applied or initiated the application of a conservation practice for the purposes of CFO prior to approval of the CFO contract.

(g) When requested by the State Conservationist on a case-by-case basis, the Chief may approve, based upon availability of funding, cost share on the reapplication of a practice to re-

place or repair practice destroyed by unusual circumstances beyond the control of the landowner.

(h) The participant and NRCS must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract before the CCC will approve the payment of any cost-share, incentive, or land retirement payment.

§ 1468.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements and is approved by the conservation district.

(b) The participant may agree to transfer a contract to another eligible owner or operator with the agreement of CCC. The transferee shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract. By agreeing to participate in CFO, CCC may require operation and maintenance of those conservation practices installed under CRP, EQIP, or WRP.

(c) CCC may require a participant to refund all or a portion of any assistance earned under a CRP or EQIP contract, or WRP cost-share agreement that was terminated as a condition of participation in CFO, if the participant sells or loses control of the land under a CFO contract and the new owner or controller does not assume responsibility under the contract.

§ 1468.25 Contract violations and termination.

(a)(1) If it is determined that a participant is in violation of the provisions of this part, or the terms of the contract including portions of the contract that incorporate transferred obligations from CRP or EQIP contracts, or WRP cost-share agreements, CCC will give the participant written notice of a reasonable time to correct the violation and comply with the terms of the contract and attachments thereto,

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as determined by the FSA county committee, in consultation with NRCS. If a participant continues in violation after the time to comply has elapsed, the FSA county committee may, in consultation with NRCS, terminate the CFO contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the FSA county committee, in consultation with NRCS, that the participant has submitted false information, filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of §1468.35 of this part, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest, determined in accordance with part 1403 of this chapter. CCC has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract for any reason stated above, before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good-faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract without penalty,

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if CCC determines that such termination would be in the public interest.

Subpart C—General Administration

§ 1468.30 Appeals.

(a) An applicant or participant may obtain administrative review of an adverse decision made with respect to this part and the CFO contract in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

- (1) CCC funding allocations;
- (2) Eligible conservation practices;
- (3) Payment rates, and cost-share percentages;
- (4) Science-based formulas and factor values;
- (5) Soils mapping and information; and
- (6) Other matters of general applicability.

§ 1468.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1468.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, or as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this right to access.

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§ 1468.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1468.35 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program; made any fraudulent representation; or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such appli-

cant or participant with respect to CFO contracts.

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 3830 *et seq.*

SOURCE: 70 FR 15212, Mar. 25, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico,